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Supreme Court of the United States

OCTOBER TERM, 1948

No. 132

THE UNITED STATES, *Petitioner*

v.

RICHARD S. CORS

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS

A SUGGESTION OF DIMINUTION OF THE RECORD AND MOTION FOR A WRIT OF CERTIORARI TO CORRECT SAME

RICHARD S. CORS,
By COVINGTON, BURLING, RUBLEE,
ACHESON & SHORB,
Of Counsel

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Comes now Richard S. Cors, Respondent in the above-entitled matter, and respectfully shows to the Court as follows:

1. On June 29, 1948, Petitioner in the above-entitled matter filed its petition for a writ of certiorari to the Court of Claims and, at the same time, filed a transcript of record to accompany said petition. Previous to said filing Petitioner had requested the Clerk of the Court of Claims of the United States to furnish a certified transcript of the record. Said request did not include

any "other parts of the record as are material to the errors assigned" as provided in Rule 99 (a) of said Court but included only the pleadings, findings of fact, conclusions of law, judgment and opinion of the court, motion for new trial and the denial thereof.

2. More than 60 days after the filing of the said record with this Court Respondent retained additional counsel to represent him before this Court.

3. Said additional counsel have advised Respondent that certain matters included in the transcript of testimony taken in the Court of Claims, and considered by said Court in entering the judgment here under review, are by them considered material to the issues placed before this Court by the granting of the petition for certiorari by this Court on October 11, 1948. Said material matters are as follows:

Extracts from Testimony before the Court of Claims in No. 46796, Richard S. Cors v. The United States.

* * * * *

Direct examination of John A. Mowbray, a witness produced on behalf of the plaintiff.

Transcript page 141

7Q. Did you at any time in the year 1942 have occasion to visit the tug MAC ARTHUR at New York?

A. Yes, sir, I did.

8Q. In what month?

A. It was in June of 1942.

9Q. Where was she?

A. She was on one of the piers in the East River.

10Q. What was the purpose of your visit to her?

A. With the idea of purchase.

Transcript page 143

23Q. Did you form an opinion, as a practical operator and owner, of the market value of the MAC ARTHUR as of the time when you saw her, based on your inspection of her?

A. I made an offer for the purchase of her at that time.

Transcript page 144

THE WITNESS: At that time I valued her at $18,000. and made an offer of $18,000. for the vessel.

BY MR. MASON:

26Q. That offer was rejected, was it not?

A. That is correct.

Cross-examination of John A. Mowbray.

Transcript page 151

69RXQ. Are you prepared to state what this boat would have been worth in 1939?

A. No, I would not. During the time when there was a demand and we needed the vessel, to us she was worth the price that we offered for her.

70RXQ. And it was because of the demand that you offered $18,000.?

A. That is correct, sir.

* * * * *

73RXQ. Is it not a fact that you offered $18,000. because of the scarcity of vessels in 1942 due to the fact that the Government had taken over practically all small craft as of that date?

Transcript page 152

THE WITNESS: There was plenty of small craft in New York Harbor at the time, and I wanted a boat so that I could have it when I wanted to move it and I did not want to pay a lot of money for it.

Cross-examination of Edmond J. Moran, a witness produced on behalf of the defendant.

Transcript page 210

251XQ. In this particular case, do you recall that you had before you a photostat of an offer which Mr. Cors had received from Emory Sexton & Company of $17,500.?

A. Do I—? What was that?

MR. MASON: Read that back, please.

(251XQ read by the reporter.)

THE WITNESS: Yes, I saw the copy of the offer.

252XQ. Did you give it any consideration in your appraisal?

A. No, sir.

* * * * * *

4. Said additional counsel were not retained by Respondent until after expiration of the period set forth in Rule 17 of this Court for the filing of motions for a writ of certiorari to correct diminution of the record. For this special cause shown Respondent respectfully prays that this Court should receive this motion as permitted by said Rule 17.

WHEREFORE Respondent moves the Court for a writ of certiorari to correct the said diminution of the record in the above-entitled matter.

RICHARD S. CORS,

By COVINGTON, BURLING, RUBLEE, ACHESON & SHORB,

Of Counsel

DISTRICT OF COLUMBIA, *ss:*

John Lord O'Brian, being duly sworn deposes and says:

I am a member of the firm of Covington, Burling, Rublee, Acheson & Shorb, of counsel in the above-entitled matter. I have read the foregoing motion and know the contents thereof and I am informed and verily believe that the statements therein contained are true.

(Signed) JOHN LORD O'BRIAN.

Subscribed and sworn to before me this 13th day of January, 1949.

MARGARET MACPHERSON,
Notary Public.